



Comptroller General
of the United States

Washington, D.C. 20548

Lebowitz

Decision

Matter of: Gulf Electric Construction Co., Inc.--Claim
for Costs

File: B-235635.2

Date: January 5, 1990

DIGEST

Prior recommendation to terminate contract is modified where agency advises contract is substantially complete. Instead, protester is entitled to recover reasonable bid preparation costs and costs of filing and pursuing its protest.

DECISION

By this decision, we award Gulf Electric Construction Co., Inc., its bid preparation costs in addition to its costs of filing and pursuing its protest, including attorneys' fees, as awarded in our initial decision. Gulf Electric Constr. Co., Inc., B-235635, Sept. 26, 1989, 68 Comp. Gen. ___, 89-2 CPD ¶ 272.

Gulf protested to our Office the award of a contract to Atlantic Electric Co., Inc., the apparent low bidder, under invitation for bids (IFB) No. F09650-89-B-0005, issued by the Air Force for the repair and upgrading of lighting fixtures in a building at Robins Air Force Base, Georgia. We sustained the protest. We found that Atlantic's failure to acknowledge prior to bid opening an amendment which increased by \$650 the estimated cost of performance rendered Atlantic's bid nonresponsive because the cost impact amounted to more than two times the difference between its low bid and the second low bid and more than 30 percent of the difference between its low bid and Gulf's responsive bid. We determined that such an amendment had a material impact on cost, and therefore, the Air Force erred in allowing Atlantic to acknowledge the amendment after bid opening. We recommended that the Air Force terminate the contract awarded to Atlantic and award the contract to Gulf, if otherwise appropriate. Further, we found that Gulf was entitled to its protest costs. Bid Protest Regulations, 4 C.F.R. § 21.6(d) (1989).

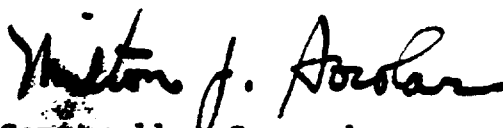
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Regarding our recommendation that the agency terminate Atlantic's contract, the Air Force states that Atlantic has substantially completed the contract. Under the circumstances, we modify our prior recommendation and find that Gulf is entitled to recover its bid preparation costs in addition to its protest costs. 4 C.F.R. § 21.6(d); see Meridian Corp.--Award of Costs, B-228468.2, June 14, 1988, 88-1 CPD ¶ 566.

In this regard, Gulf has filed a claim with the Air Force in the amount of \$17,640--\$720 for its costs of filing and pursuing its protest and \$16,920 which appears to represent Gulf's anticipated profit on the project. The agency requested that Gulf submit an itemized invoice with supporting documentation in order to be reimbursed for its protest costs, and it denied the remainder of Gulf's claim. Gulf then filed its claim with our Office.

With respect to Gulf's claim for \$720 for its costs of filing and pursuing its protest, the agency has stated that it is prepared to consider this claim for reimbursement, but Gulf has not yet provided documentation to support the remainder of its claim. We have held that a successful protester who was not represented by an attorney can be reimbursed for the time its employees spent pursuing the protest, where it documents the number of hours/days spent by each employee on activities directly related to pursuing the protest and the cost elements of each claimed employee's hourly/daily charge. See Ultraviolet Purification Sys., Inc.--Claim for Bid Protest Costs, B-226941.3, Apr. 13, 1989, 89-1 CPD ¶ 376. Gulf should submit its documentation to the Air Force.

Also, to the extent the remainder of Gulf's claim represents anticipated profit, the general rule is that anticipated profits may not be recovered even in the presence of wrongful action. See East West Research, Inc.--Reconsideration, B-233623.2, Apr. 14, 1989, 89-1 CPD ¶ 379.

for 
Controller General
of the United States